

REMARKS

This is in response to the Office Action mailed September 23, 2004. A Petition for Extension of Time is submitted herewith in connection with this response.

It is noted that the Office Action acts on all of claims 1-38, even though a Preliminary Amendment was filed with this application requesting cancellation of claims 2, 4, 5 and 35-38 before calculating the filing fee. Because all of the original claims were examined and acted upon, applicants have re-presented claims 4, 5 and 35-38 and have paid the filing fee for their examination. Original claim 4 is now renumbered as claim 39, original claim 5 is now renumbered as new claim 40, and original claims 35-38 are now renumbered as new claims 41-44. Claim 2 is not re-presented in this application, because it was prosecuted in the related application Serial No. 09/434,838, now U.S. Patent 6,610,075.

Applicants were pleased to note the allowance of claim 1, and of claims 5 and 35-38. Claims 5 and 35-38, now renumbered as claims 40-44 and being identical to the claims 5 and 35-38 that were indicated as allowed, are believed to be covered by that allowance.

Applicants now respond to the rejections set forth in the Office Action.

Claim 2 was rejected, but as noted above, claim 2 is not being prosecuted in this application. The *Ruiz, et al* U.S. Patent 5,133,726 used for the rejection was considered in that other prosecution.

Claims 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by *Dybbs* U.S. Patent 6,228,099. With respect to *Dybbs* '099, applicants note that this application claims priority to a provisional applications filed October 24, 1997 and November 5, 1998. *Dybbs* '099 has its earliest priority date based on a provisional application filed November 21, 1997, the content of which is unknown to applicants and is not of record herein, and the

*Dybbs* '099 patent has a filing date of November 20, 1998 and an issue date of May 8, 2001.

Therefore, the *Dybbs* '099 patent is not prior art under 102(b).

*Dybbs* '099 also does not disclose, teach or suggest the invention defined in claims 3 and 6. *Dybbs* '099 discloses a microkeratome 12 that is a preassembled combination of a base 72 and a cutting instrument 74. The base 72 includes a plate 76 and a suction ring 88. The cutting instrument has parallel bars 112 that are received in parallel guides 82 along the plate 76. The guides 82 and bars 112 cooperate for guiding the linear reciprocal sliding movement of the cutting instrument 74 on the base 72.

Still referring to the microkeratome 12 of *Dybbs* '099, because the bars 112 and guides 82 define the linear motion of the cutting instrument over the eye, they must have close cooperating tolerances. Any wiggle or slop in the linear motion could result in an uneven cut, which would not be acceptable and could even damage the patient's eye. It follows that inserting the cutting instrument 74 into the guides 82 is a precision operation, and that it could not be readily accomplished while the base 72 and its platform 76 are secured to the patient's eye by the suction ring 88. But it is not necessary to join the cutting instrument 74 to the base 72 while the base is mounted on the patient's eye, because the cutting instrument 74 and the platform 72 are pre-assembled as a microkeratome unit 12 prior to being positioned on the patient's eye. In fact, the cutting instrument 74 of *Dybbs* '099 is retained on the base 72 by a retainer clip 78, which "... prevent[s] the cutting assembly from disengaging the platform guides 82." Column 8, lines 17, 18.

In the keratome of claims 3 and 6 herein, the suction ring is first positioned on the patient's eye, and then the cutting instrument is introduced to the suction ring, which includes guideways for receiving it. As defined in claims 3 and 6, a shoe on the suction ring first

defines “a) a cutting guideway configured for receiving the cutter head in precise meeting sliding engagement when the cutting edge of the blade is positioned over the cornea aperture of the eye ring, . . .”. This cutting guideway corresponds to the bars 112 and guides 82 of *Dybbs* '099. However, in applicants' keratome as defined in claims 3 and 6, the shoe further defines “b) an entrance guideway extending from and generally aligned with the cutting guideway, the entrance guideway configured for receiving the cutter head in oriented sliding engagement and positively positioning the cutter head for precise meeting sliding engagement with the cutting guideway.” This entrance guideway facilitates inserting the cutter head into the precision cutting guideway, so that this can be accomplished while the suction ring is received on the patient's eye. *Dybbs* '099 does not have such a second entrance guideway as called for in claims 3 and 6, nor does *Dybbs* '099 have anything equivalent thereto. Therefore, claims 3 and 6 clearly distinguish over *Dybbs* '099 and are patentable, together with claims 7-34 dependent from claim 6.

Claim 4, now claim 39, stands rejected as being anticipated by *Kramer, et al* U.S. Patent 4,688,570. The *Kramer* '570 patent discloses a suction ring and associated instrumentation for use in performing radial keratotomy. The suction ring is part of a template 10, having inner and outer walls 14 and 15, respectively, spaced radially from each other to define a generally annular suction chamber 16 therebetween. The annular suction chamber 16 appears to be uniform about the template 10, and a suction conduit applies suction to the annular chamber 16 through an opening 24 in wall 15, as perhaps best seen in FIG. 6 of the *Kramer* '570 patent.

Applicants' keratome utilizes a suction ring having a suction channel 34 between eye engaging surfaces 30 and 32, as best illustrated in FIG. 7. As described at page 22, lines 18-25, applicants' device also has a secondary distribution channel 40 extending inwardly from the suction channel 34, the secondary distribution channel 40 being sufficiently deep and narrow at its opening that the eye cannot block it. This assures that equal suction is provided around the entire periphery of the eye ring. Claim 4, now claim 39, defines both the suction channel between first and second concentric eye-engaging surfaces, and the secondary distribution channel extending inwardly from the suction channel. *Kramer '570* does not disclose such a secondary distribution channel, and therefore does not anticipate nor render obvious claim 4, now claim 39.

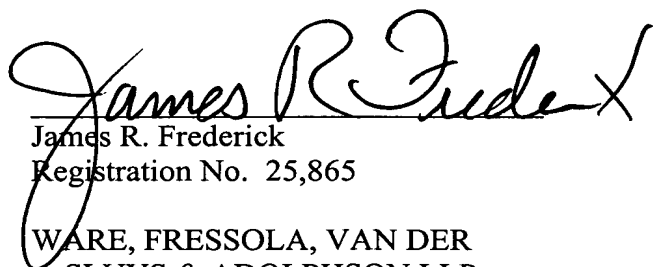
Accordingly, claims 1, and 40-44 are previously allowed, and claims 3, 6-34 and 39 are believed patentable. Allowance of this application is earnestly solicited.

Please charge any additional fees in connection with this Amendment to Deposit Account 23-0442.

Respectfully submitted,

Date:

Feb 23, 2005



James R. Frederick  
Registration No. 25,865

WARE, FRESSOLA, VAN DER  
SLUYS & ADOLPHSON LLP  
Bradford Green, Building Five  
755 Main Street, P. O. Box 224  
Monroe, Connecticut 06468  
Telephone: (203) 261-1234  
Facsimile: (203) 261-5676